

David J. Bradley, Clerk

1  
 2  
 3  
 4  
 5  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28  
 29  
 30  
 31  
 32  
 33  
 34  
 35  
 36  
 37  
 38  
 39  
 40  
 41  
 42  
 43  
 44  
 45  
 46  
 47  
 48  
 49  
 50  
 51  
 52  
 53  
 54  
 55  
 56  
 57  
 58  
 59  
 60  
 61  
 62  
 63  
 64  
 65  
 66  
 67  
 68  
 69  
 70  
 71  
 72  
 73  
 74  
 75  
 76  
 77  
 78  
 79  
 80  
 81  
 82  
 83  
 84  
 85  
 86  
 87  
 88  
 89  
 90  
 91  
 92  
 93  
 94  
 95  
 96  
 97  
 98  
 99  
 100  
 101  
 102  
 103  
 104  
 105  
 106  
 107  
 108  
 109  
 110  
 111  
 112  
 113  
 114  
 115  
 116  
 117  
 118  
 119  
 120  
 121  
 122  
 123  
 124  
 125  
 126  
 127  
 128  
 129  
 130  
 131  
 132  
 133  
 134  
 135  
 136  
 137  
 138  
 139  
 140  
 141  
 142  
 143  
 144  
 145  
 146  
 147  
 148  
 149  
 150  
 151  
 152  
 153  
 154  
 155  
 156  
 157  
 158  
 159  
 160  
 161  
 162  
 163  
 164  
 165  
 166  
 167  
 168  
 169  
 170  
 171  
 172  
 173  
 174  
 175  
 176  
 177  
 178  
 179  
 180  
 181  
 182  
 183  
 184  
 185  
 186  
 187  
 188  
 189  
 190  
 191  
 192  
 193  
 194  
 195  
 196  
 197  
 198  
 199  
 200  
 201  
 202  
 203  
 204  
 205  
 206  
 207  
 208  
 209  
 210  
 211  
 212  
 213  
 214  
 215  
 216  
 217  
 218  
 219  
 220  
 221  
 222  
 223  
 224  
 225  
 226  
 227  
 228  
 229  
 230  
 231  
 232  
 233  
 234  
 235  
 236  
 237  
 238  
 239  
 240  
 241  
 242  
 243  
 244  
 245  
 246  
 247  
 248  
 249  
 250  
 251  
 252  
 253  
 254  
 255  
 256  
 257  
 258  
 259  
 260  
 261  
 262  
 263  
 264  
 265  
 266  
 267  
 268  
 269  
 270  
 271  
 272  
 273  
 274  
 275  
 276  
 277  
 278  
 279  
 280  
 281  
 282  
 283  
 284  
 285  
 286  
 287  
 288  
 289  
 290  
 291  
 292  
 293  
 294  
 295  
 296  
 297  
 298  
 299  
 300  
 301  
 302  
 303  
 304  
 305  
 306  
 307  
 308  
 309  
 310  
 311  
 312  
 313  
 314  
 315  
 316  
 317  
 318  
 319  
 320  
 321  
 322  
 323  
 324  
 325  
 326  
 327  
 328  
 329  
 330  
 331  
 332  
 333  
 334  
 335  
 336  
 337  
 338  
 339  
 340  
 341  
 342  
 343  
 344  
 345  
 346  
 347  
 348  
 349  
 350  
 351  
 352  
 353  
 354  
 355  
 356  
 357  
 358  
 359  
 360  
 361  
 362  
 363  
 364  
 365  
 366  
 367  
 368  
 369  
 370  
 371  
 372  
 373  
 374  
 375  
 376  
 377  
 378  
 379  
 380  
 381  
 382  
 383  
 384  
 385  
 386  
 387  
 388  
 389  
 390  
 391  
 392  
 393  
 394  
 395  
 396  
 397  
 398  
 399  
 400  
 401  
 402  
 403  
 404  
 405  
 406  
 407  
 408  
 409  
 410  
 411  
 412  
 413  
 414  
 415  
 416  
 417  
 418  
 419  
 420  
 421  
 422  
 423  
 424  
 425  
 426  
 427  
 428  
 429  
 430  
 431  
 432  
 433  
 434  
 435  
 436  
 437  
 438  
 439  
 440  
 441  
 442  
 443  
 444  
 445  
 446  
 447  
 448  
 449  
 450  
 451  
 452  
 453  
 454  
 455  
 456  
 457  
 458  
 459  
 460  
 461  
 462  
 463  
 464  
 465  
 466  
 467  
 468  
 469  
 470  
 471  
 472  
 473  
 474  
 475  
 476  
 477  
 478  
 479  
 480  
 481  
 482  
 483  
 484  
 485  
 486  
 487  
 488  
 489  
 490  
 491  
 492  
 493  
 494  
 495  
 496  
 497  
 498  
 499  
 500  
 501  
 502  
 503  
 504  
 505  
 506  
 507  
 508  
 509  
 510  
 511  
 512  
 513  
 514  
 515  
 516  
 517  
 518  
 519  
 520  
 521  
 522  
 523  
 524  
 525

The plaintiff, Alejandro Gonzales (BOP #21449-078), has filed a Prisoner Civil Rights Complaint under 42 U.S.C. § 1983 ("Complaint") (Docket Entry No. 1) against the District Court of Brazoria County and the Court of Appeals for the State of Texas located in Houston. Gonzales has supplemented his Complaint by providing a response to the court's Order for More Definite Statement ("Plaintiff's Response") (Docket Entry No. 8). Because Gonzales is a prisoner who proceeds in forma pauperis, the court is required to scrutinize the claims and dismiss the Complaint, in whole or in part, if it determines that the Complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted" or "seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b); 28 U.S.C.

§ 1915(e)(2)(B). After considering all of the pleadings, the court concludes that this case will be dismissed for the reasons explained below.

### I. Background

Since July 23, 2013, Gonzales has been in federal custody as the result of drug-trafficking charges filed against him in the United States District Court for the Eastern District of Texas, Beaumont Division. Gonzales was accused of conspiracy to distribute more than one controlled substance, including cocaine, marijuana, and methamphetamine.<sup>1</sup> Gonzales was convicted of those charges and sentenced to 270 months in federal prison on January 30, 2014.<sup>2</sup>

Gonzales, who remains in custody of the United States Bureau of Prisons ("BOP"), has filed a Complaint against the District Court of Brazoria County located in Angleton, Texas, and the Court of Appeals for the State of Texas located in Houston.<sup>3</sup> His claims stem from the failure of state officials to prosecute him on criminal charges that were filed against him in Brazoria County.<sup>4</sup>

---

<sup>1</sup>Plaintiff's Response, Docket Entry No. 8, pp. 1-2. For purposes of identification, all page numbers refer to the pagination imprinted by the court's electronic filing system, CM/ECF.

<sup>2</sup>Id. at 2 (listing Criminal No. 1:13-cr-00055-003 as the case number for his federal conviction and sentence).

<sup>3</sup>Complaint, Docket Entry No. 1, p. 4.

<sup>4</sup>Id. at 5.

Gonzales explains that the Brazoria County Sheriff's Department obtained an arrest warrant for him in 2013, but that he was not arrested or prosecuted on those charges in Brazoria County District Court.<sup>5</sup> Instead, Gonzales was taken into federal custody and prosecuted in federal court on the above-referenced drug-trafficking charges.<sup>6</sup>

Gonzales does not provide details about the nature of the charges or the warrant for his arrest that was obtained by the Brazoria County Sheriff's Department in 2013. Gonzales references Brazoria County Case No. 202840W,<sup>7</sup> which appears related to a charge of assault causing bodily injury to a family member.<sup>8</sup> Public records reflect that those charges were filed as a misdemeanor in Brazoria County Court at Law #3, and not in Brazoria County District Court.<sup>9</sup>

In October of 2017 Gonzales sent a "Motion for Default Judgment and Failure to Prosecute" to the District Court of Brazoria County in an effort to vacate the arrest warrant against

---

<sup>5</sup>Plaintiff's Response, Docket Entry No. 8, p. 2.

<sup>6</sup>Id.

<sup>7</sup>Complaint, Docket Entry No. 1, p. 3.

<sup>8</sup>See State of Texas, County of Brazoria Court Records Inquiry, located at: <https://pubweb.brazoriacountytx.gov> (last visited Feb. 26, 2020). The only charges against Gonzales that the court could locate in Brazoria County were assault charges filed in Cause No. 202840.

<sup>9</sup>See id.

him and have any pending state court criminal charges dismissed, invoking his right to a speedy trial and the Interstate Agreement on Detainers Act.<sup>10</sup> When Gonzales received no response, he filed a "Second Request for Default Judgment" on December 2, 2017, for the State's failure to prosecute him in a timely manner.<sup>11</sup> In March of 2018 Gonzales filed a "Third Request for Default Judgment," invoking the same grounds and requesting an order of dismissal with prejudice concerning the state court charges against him.<sup>12</sup>

Gonzales contends that his requests were not "processed" or acted upon by the District Court of Brazoria County and that, to date, his submissions have been ignored without any ruling.<sup>13</sup> In August of 2018 Gonzales attempted to file an "appeal" with the Court of Appeals for the State of Texas in Houston, but again he received no response.<sup>14</sup> Invoking 42 U.S.C. § 1983, Gonzales now asks this court to order the District Court of Brazoria County to take action on his requests for a default judgment and to "dismiss"

---

<sup>10</sup>Plaintiff's Response, Docket Entry No. 8, p. 3.

<sup>11</sup>Id.

<sup>12</sup>Id. at 4.

<sup>13</sup>Id. at 5.

<sup>14</sup>Id. at 6-8. The court asked Gonzales to clarify whether his appeal was filed with the First Court of Appeals or the Fourteenth Court of Appeals, both of which are located in the same building in downtown Houston, but he responded only that he mailed his submission to "301 Fannin Street, Houston, Texas 77002-2066." Id. at 6.

any state court criminal charges against him for lack of prosecution.<sup>15</sup>

## II. Discussion

Although Gonzales invokes the civil rights statute found at 42 U.S.C. § 1983, he seeks injunctive relief that is in the nature of a writ of mandamus. The federal mandamus statute provides that district courts shall have "original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. Both the District Court for Brazoria County and the Court of Appeals in Houston are state agencies operated by state or local officials, not by officers or employees of the United States. This court has no power to grant injunctive relief or issue federal writs of mandamus to direct state officials in the performance of their duties. See Moye v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1275-76 (5th Cir. 1973).

Accordingly, the Complaint will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) as frivolous and for failure to state a claim upon which relief may be granted. See Johnson v. Bigelow, 239 F. App'x 865 (5th Cir. 2007) (per curiam) (affirming the dismissal as frivolous of a prisoner's request for injunctive

---

<sup>15</sup>Complaint, Docket Entry No. 1, p. 4.

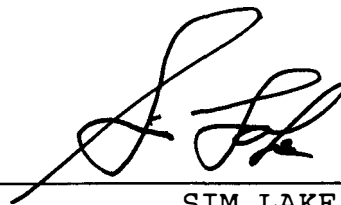
relief under 42 U.S.C. § 1983 against a state judge because "the federal courts have no authority to direct state courts or their judicial officers in the performance of their duties").

### III. Conclusion and Order

Based on the foregoing, it is ORDERED that the Prisoner's Civil Rights Complaint filed by Alejandro Gonzales (Docket Entry No. 1) is DISMISSED with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) as frivolous and for failure to state a claim upon which relief may be granted.

The Clerk is directed to provide a copy of this Memorandum Opinion and Order to the plaintiff. The Clerk will also send a copy to the Three Strikes List at [Three\\_Strikes@txs.uscourts.gov](mailto:Three_Strikes@txs.uscourts.gov).

SIGNED at Houston, Texas, on this 27th day of February, 2020.

A handwritten signature in black ink, appearing to read 'S. Lake', is written over a horizontal line.

SIM LAKE  
SENIOR UNITED STATES DISTRICT JUDGE